

COMMISSIONERS APPROVAL

ROKOSCH

JHR

GRANDSTAFF

CC

THOMPSON

AT

CHILCOTT

NY

DRISCOLL

RD

PLETTENBERG (Clerk & Recorder)

Date.....October 2, 2007

Members Present.....Commissioner Carlotta Grandstaff,
Commissioner Jim Rokosch, Commissioner Alan Thompson and Commissioner Greg
Chilcott

Minutes: Beth Perkins

Commissioner Kathleen Driscoll attended a State Sanitarian Conference in Billings, MT.

The Board met for discussion on the recommended changes to the Streamside Setback
proposal. Present were Planner Vanessa Perry and several members of the community.

Commissioner Rokosch stated the purpose of this meeting is to have an open discussion
regarding possible changes to the draft.

Commissioner Grandstaff stated she spoke to committee member Roger DeHaan about
the proposal and their discussion was the draft might be too wordy with too much
discussion regarding agriculture. She asked if the committee would be willing to discuss
prohibition of building new homes on the river and natural streams.

Roger DeHaan stated 90% of the committee would be willing to do that. Commissioner
Chilcott stated he would like to strike the word 'streams' out of the draft since they are
already mapped but did not come to any agreement on it.

Commissioner Chilcott stated the Commissioners' number one priority is countywide zoning. We have talked about streamside setbacks in regard to long term planning and zoning. Streamside setbacks are number two in priority. The floodplain would define an emergency. He doesn't understand why this issue can't wait until phase two of the countywide zoning project. Commissioner Grandstaff replied there are rivers and streams that people cherish, and she felt this is an emergency. Currently there is no protection of these rivers and streams. Commissioner Rokosch stated there are situations where there is no floodplain mapping in order to address these streams and rivers. He stated he has real concerns about where these structures are being placed. People don't understand there are impacts upstream as well as downstream. There are safety and health concerns with human activity and associated human activity within those areas with pesticides and herbicides. As for public resources, he felt they need to be conscious of that as well. He also felt the Commissioners should address the economic value and economic opportunities. He felt the issue is accentuated where the floodplain is not delineated.

Commissioner Chilcott stated he does not see an immediate threat. He thinks they have the time to do it right. He also noted if it is not done right the first time, how will they find time to do it right the second time. Currently he does not see this as an imminent threat. Personally he has spent a lot of money proving to FEMA his own home is within the guidelines of the floodplain mapping.

Commissioner Grandstaff asked about the tributaries. Commissioner Chilcott replied they have the time to discuss the tributaries and the topography should factor in significantly. Commissioner Rokosch stated in consideration of setbacks, the interim measure should exempt all agriculture. Commissioner Grandstaff stated she agrees and it should be taken out of the draft. Commissioner Chilcott stated the Department of Revenue should define agricultural use. Commissioner Grandstaff stated her suggestion is to remove all language regarding agricultural use.

Commissioner Thompson stated he has reviewed the draft and found a few things he is not comfortable with. He stated the Conservation District defines 310 permits requirement for rivers and streams. It also includes ponds and wetlands. There is a section that addresses motorized use for recreational activities. Handicapped people may want to access the river. He also noted if they are going to talk about any kind of an emergency, there isn't a lot of content that expresses an emergency. Commissioner Rokosch stated it is clear to him the Board of County Commissioners should differentiate between interim and comprehensive setback regulations. He felt they have to have a base for an emergency and stated he agrees with Commissioner Thompson.

Vanessa stated at the September 28th meeting; it was the Streamside Setback Committee's understanding that time would be given to the planning staff so they could have a detailed review of the proposal and the priority of the proposal with the current work load. They have scheduled a meeting for November 5th in order to have a discussion about the nature of the emergency.

Commissioner Grandstaff stated her understanding was that planning is requesting direction from the Commissioners prior to that November 5th meeting. Vanessa replied she would prefer Planning Director Karen Hughes and Floodplain Administrator Laura Hendrix be present during these meetings.

Commissioner Rokosch stated they are addressing Section C which states where the proposal is at the time and where it is going. Commissioner Rokosch requested the agenda of the November 5th meeting. Vanessa replied it will be to discuss Sections A, B, and C.

Commissioner Chilcott stated the Streamside Setback Committee has done a lot of work and has done a very thorough job of detailing this proposal. However, he felt they could come up with a more 'scientifically based proposal' as this project has been rushed and the emergency status is ill-defined. He asked what the emergency on these tributary streams is. Commissioner Grandstaff stated there was some flooding last November on these streams. Commissioner Chilcott replied that is not uncommon and they will probably see some flooding from the Rombo fire. Commissioner Grandstaff asked if that would constitute as an emergency.

Commissioner Rokosch stated there are some aspects of the proposal that are not directly based on an emergency. He felt the November 5th date would give them enough time for a final draft. He stated there will be a representative from Gallatin County here this evening at 7 p.m. He hopes to glean some information from Gallatin County as they too adopted a measure of Streamside Setback zoning. He stated the Commissioners will utilize the date of November 5th as the deadline to make a decision of defining an emergency and developing the interim advisory draft. Commissioner Rokosch stated he would like to have one more open discussion prior to the November 5th meeting.

Public comment was then called for.

Gene Williams stated he has prepared a brief statement. He was told streamside setbacks were on the agenda. He requested a definition of wildlife migration corridors. The proposed regulations address the corridors along the rivers. Mandating a landowner to give up a portion of their property designated to wildlife corridors without compensation is illegal. It was alleged there are no regulations to building within a floodplain. It seems to be a race for the Commissioners to impose regulations and a race for homeowners to build before the regulations can be in place. The wildlife may not even use the corridors mandated. The Commission cannot be allowed to violate landowners' rights. This has nothing to do with the wildlife.

Tom Robak stated his property borders the river. He stated the voters elected the Commissioners to look at all the issues plus both sides and figure out what makes common sense. He felt it was important to look 50-years down the road. He stated the property tax is enormous for river front property, this needs to be reviewed in the study. If private property is taken away from people who own property, it could be worth millions of dollars. He asked what happens to the person who only owns 3-acres of land

and the county takes a portion of that away for the set back. That could not leave much. He stated logging companies are getting rich; and everyone jumped on the bandwagon and stopped it. Now 15 years later we are living with the consequences on that action. At the time, we didn't take into consideration the economic impact of what logging gave to our communities. Now, with no logging going on we sit back and watch it burn, deal with the impact of the smoke and safety hazards of fire.

Susanna Pyon stated she lives on a stream. There are a lot of aspects of living there she highly recommends. She does not believe anyone should tell them where to build. If they are following the law, (obtaining the 310 permit, the sanitation permits, and doing the right thing), there shouldn't be a problem. She doesn't believe they need Streamside Setbacks.

David Marquette stated he agrees with Commissioner Chilcott in regard to taking time with this setback issue. He believes agriculture should be removed from this proposal. He thinks this should be defined as to what is prohibited, not what is allowed.

Jay Meyer stated he would like to see streamside setbacks dropped. He did not feel they can ask for a variance in upstream and downstream hydraulics. There is economic hype of the money that comes in from the river. He stated the Commissioners should not come down with a heavy hammer for someone who already has nails in their coffin. Agriculture should be exempt, and when the land owner asks for a loan from the bank, they will loan the market value of the property. Zoning should be done in regard to the production of the property. He stated 'please don't regulate, but reward people for their property'.

Clay Dethlefsen stated he is the chair of the Streamside Setback Committee. He would like to comment on the things they have gone through on this committee. When the committee first started they did not have any public input. Now, they do. They are trying to entertain every comment being said. A lot of what he has heard this morning, has prompted the thought process. What they have achieved thus far is a version of setbacks. People have comments but they are having trouble putting those comments into an 'objective perspective'. We have meetings every month and need public input during those meetings. He has heard people say there is an emergency while others state there is no emergency. Every one of the 17 members of this committee feel there is a need to do something with the stream sides. He would invite everyone to attend the Streamside Setback Committee meetings. In August he requested a defined area they should be looking at for the setbacks. The committee also created a proposal which allows for mitigation.

Commissioner Rokosch thanked everyone who attended today and encouraged everyone to write down their thoughts and submit them to the Board for consideration.

The Board met for an update on the Nelson Family Transfer. Present were Civil Counsel Alex Beal, Terry Nelson, Marie Arnott and several members of the community.

Alex gave an update stating this whole question of evasion seems to be based upon a timing issue. He felt this issue is going to take some time to work out.

Commissioner Grandstaff requested a timeframe. Alex replied he wishes he could lay out a timeline; however he has been working on the criminal overflow cases and can't promise anything at this time. Commissioner Rokosch stated the Commissioners should give Alex a timeframe. Commissioner Chilcott stated from past experience, anything Alex comes up with will need a stamp of approval from the County Attorney.

Commissioner Grandstaff stated she had spoken with Marie Arnott and believes the people affected by Terry's action deserve an explanation.

Commissioner Rokosch asked Alex if he had the pro rata estimate for the road if this had gone through the subdivision process. Alex replied yes, he has numbers for the pro rata assessment. Alex stated if they have a clear deadline for legal matters, he can work with that number.

Commissioner Grandstaff stated this project created a bad road and the residents have had to live with the bad road for the past three years. She felt they deserved an answer to this issue and asked Alex what could be put aside in order to gain a solution to this problem. Alex replied he has criminal case priority.

Commissioner Chilcott asked Terry what he could offer to mitigate this issue. Attorney David Marquette replied he and his client are not offering any mitigation with the threat of litigation at this time. Alex stated it is up to the Commission to prioritize his workflow, as this solution is not a five minute thing. This is not a clear area of law where he can just cut and paste.

Commissioner Chilcott stated if we get the attorneys out of the room and talk about this, he thinks they could work something out. He would entertain sitting down to resolve this as it could shave off 16 months of staff time and expenditures. Commissioner Rokosch stated he has reviewed the history of this issue and they have been at this same point for the past 3 years. If having Alex review the issue is a question of workload; the Commissioners need to review that in terms of availability. He stated the Board needs a clear idea of what they are asking of Alex. Alex replied in an ideal world where the phone doesn't ring and people don't interrupt him, he could possibly put something together in an 8-hour session.

Public comment was called for.

Resident Mike Grenell stated he is willing to negotiate with Terry Nelson. The road needs to be fixed. If they are willing to sit down and negotiate they would be willing to drop the law suit.

Marie Arnott stated he agrees with Mike. If it was a reasonable amount, they would be willing to negotiate. There are currently three building sites left of this subdivision. The

Commission should put a stop order to the building until a decision is made. The lack of Board action is not their problem. They have a real problem with the road. They need a decision today.

Alex replied there is a simple answer to that. If the residents want to stop the construction of the houses, the county cannot help them, as the lots have all been sold once, and the buyers are the innocent parties involved.

Commissioner Grandstaff asked Terry what he would like to do, referring to having an offer on the table.

David replied they are looking at pending litigation from both the County and the neighbors. If both parties would be willing to drop litigation, they would be willing to negotiate.

Mike Grenell stated the neighbors would like mitigation and they would like Commissioner Chilcott and Commissioner Grandstaff to monitor such mitigation.

Marie Arnott suggested mitigation with just Terry Nelson, herself and David Grenell. She also preferred no Commissioners and no legal counsel present. Terry agreed to the mitigation without legal representation for either party. Commissioner Rokosch suggested they meet immediately after this meeting and then return to the Board at 1 p.m. to discuss if they have come to an agreement. **All parties agreed to continue the meeting until 1 p.m.**

The Board reconvened on the Nelson Family transfer. A tentative settlement was reached; however the details of the mitigation were not disclosed by the participants to the board. **Commissioner Chilcott made a motion to cancel the continuation of this meeting due to settlement. Commissioner Thompson seconded the motion, all voted 'aye'.**

The Board met for the appointment of the Grantsdale Cemetery trustees. **Commissioner Grandstaff made a motion to re-appoint Frank Popiel to the Grantsdale Cemetery Trustees with term ending June 30, 2009. Commissioner Chilcott seconded the motion, all voted 'aye'.**